

**February 4, 2005**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Capitol District Information  
Date of Filing: November 29, 2004  
Case Number: TFA-0078

On November 29, 2004, Capitol District Information (CDI) filed an Appeal from a determination issued to it by the Department of Energy FOIA/Privacy Act Group (DOE/HQ) and the Office of Policy and International Affairs (DOE/OP) on November 9, 2004, in response to a request for documents that CDI submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE/OP perform an additional search for responsive material.

**I. Background**

On September 14, 2004, CDI filed a FOIA request with DOE/HQ for various records concerning:

All documents that are or reflect reports of sales of natural gas to or purchases of natural gas by Pacific Gas and Electric (PG&E) submitted pursuant to paragraph 5 of the Secretary of Energy's January 19, 2001 Temporary Emergency Natural Gas Purchase and Sale Order (attached hereto as Exhibit A) or any extension of that order. Documents responsive to this request may be in the possession of [certain] employees of DOE.

Letter from CDI to DOE/HQ (September 14, 2004) (Request). On October 18, 2004, DOE/HQ informed CDI that the request was assigned to DOE/OP to conduct a search of its files for responsive documents. Letter from DOE/HQ to CDI (October 14, 2004). DOE/HQ also informed CDI that it would be categorized as a "commercial use" requester and would be assessed fees for the search, and for the review and duplication of any responsive documents. On November 9, 2004, DOE/HQ informed CDI that DOE/OP had completed its search but was unable to locate any responsive documents. CDI was charged for 90 minutes of search time. CDI then filed an appeal. Letter from CDI to OHA (November 29, 2004). *Id.* In the Appeal, CDI challenged the adequacy of the search and asks OHA to direct DOE/OP to search again for responsive information. *Id.*

## II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

The Temporary Order authorized PG&E to make emergency purchases of natural gas from certain suppliers in order to assure the continued availability of natural gas to high-priority uses in central and northern California. *See* Temporary Emergency Natural Gas Purchase and Sale Order (January 19, 2001). Paragraph 5 of the order directed PG&E and the suppliers to report weekly to the Secretary of Energy the prices and volumes of natural gas delivered, transported, or contracted for under the Order during the previous week. The order was issued on January 19, 2001, and was extended on January 23, 2001 to February 7, 2001. *See* Further Temporary Emergency Natural Gas Purchase and Sale Order (January 23, 2001).

In its request, CDI stated that two DOE employees, Margo Anderson and Mike Skinker, may have responsive records in their possession.\* We contacted Skinker for information about the search. Skinker stated that he worked on a project related to the Order, and had responded to the original request after consulting with Anderson. *See* Memorandum of Telephone Message from Mike Skinker, OGC (December 22, 2004). Skinker thought that responsive material might be located in DOE/OP, but Anderson searched and found no responsive records in her files. *See* Electronic Mail Message from Al Cobb, DOE/OP to Melodie Washington, DOE/OP (January 4, 2005). She referred Skinker to Paul Carrier, another DOE/OP employee. A DOE/OP employee then searched Carrier’s files and Anderson’s files, and found no responsive material. Electronic Mail Message from Al Cobb, DOE/OP, to Melodie Washington, DOE/OP (January 4, 2005). After two searches, DOE/OP finally concluded on November 3, 2004, that it did not have any responsive material, and notified DOE/HQ. Electronic Mail Message from Edith Horne, DOE/OP to Valerie Vance Adeyeye, OHA (January 21, 2005).

After DOE/OP described its search, this office contacted CDI for the names of any other DOE employees that may have responsive records in their possession, or for any evidence that responsive material exists. *See* Memorandum of Telephone Conversation between Ron Barrett, CDI, and

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\* Anderson no longer works for DOE/OP, but we contacted her replacement, Al Cobb, for information about the search.

Valerie Vance Adeyeye, OHA (January 24, 2005). The requester had no additional names and has not presented any evidence that responsive material exists. *See* Memorandum of Telephone Conversation between Ron Barrett, CDI, and Valerie Vance Adeyeye, OHA (January 25, 2005). After reviewing the record of this case, we find that DOE/OP conducted a search that was reasonably calculated to uncover the requested information. Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Capitol District Information on November 29, 2004, OHA Case Number TFA-0078, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: February 4, 2005